Fundamentals of Governance—Syllabus

B8575
FOR BIDDING PURPOSES ONLY

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Office Hours: hour before/after class

TAs:

Course Description

Topics: The Public Firm, The Private Start-up, Stewardship, Social Impact and Social Ratings, Gender and Boards, Political Contributions, Blockchain Trading Platforms and Blockchain supply chains, business groups, country differences.

Organizations and firms, and how well they are governed, drive the wealth and happiness of a society. The standard view of corporate governance is to posit that governance seeks to make organizations more efficient. This has been the case for the shareholder model of governance. Yet there is more than just efficiency. Governance is also always about power as much as it is about efficiency and effective leadership. We will study different forms of governance structures to understand how they function and how well they express power and achieve – sometimes – efficient outcomes. To this, we also join the question of whether the exercise of power is fair and just.

A typical presumption has been that governance by the public corporation represents a standard by which to understand the potential of good governance. But the public corporation is besieged—stock exchanges show net de-listings, raiders are challenging venerable corporations, regulatory requirements impose heavy costs on IPOs. Is it true that the public firm, and in particular the American varietal, joins both a just distribution of power and an efficient form of governance?

These questions are lodged in a larger, often political, debate. Are public or private firms delivering an economic performance that rewards the many stakeholders: shareholders, employees, society? Whom do corporations serve? What is their performance? Are they betraying national interests by outsourcing, by employing immigrants, or by locating overseas, sometimes by inversions for primarily tax benefits?

As this course is short and quick, we focus on the United States and compare across the types of governance, e.g. the public firm, the private firm, the sports league, and the non-profit. The primary institutions discussed will be the board, the shareholders, institutional investors, the stakeholders, and management. However, there will also be plenty of moments to think about the dynamics and personalities of families, CEOs, and directors.

There are a variety of perspectives from which questions of governance can be formulated and addressed but it has been economic analysis that has largely dominated contemporary discussions of the subject. Most theories of governance are preoccupied with the relationship between institutions of governance and economic performance. We expand this perspective to ask ultimately, are there forms of governance that are competitors to the public corporation? Would they satisfy stakeholders, and the wider public, more than the shareholder governance that is so much under assault today?
It may help you also to understand what the course is not about. Because we are looking comparatively, we will not attempt to ‘go deep’, instead we ‘go wide.’ We will look at the issues of corporate governance by adding to the common discussion of the relevance of law and regulation. However, we do not look deeply at the functioning of governance at particular junctures, such as bankruptcy, acquisition, or in a proxy contest. While versions of this course have, I leave these issues to be handled in more depth in other specialized classes in order to focus more on comparisons across countries.

We study the public firm and the very current discussions and arguments on how to think about its social impact. ESG rated companies and sustainability goals are often in the news. Innovations have created new financial instruments and markets. These markets consist of green bonds, social funds, and impact investing. Recently, the largest private equity funds have created specialized funds for impact investing. These include Apollo, Carlyle, TPG, and KKR. Goldman Sachs has launched a Social Impact ETF through a partnership with Just Capital to provide the indexing. This is a new and fast-moving space, and I’ve allocated two sessions to it.

Teaching at a top university should be on the edge of what we know and have us think about possible evolutions that may or may not happen. Be open to forward-looking discussions. Not everything is looking backward through a case study. This is why the final day consists of a discussion, and your presentations, on designing governance for blockchain communities.

Your instructor: Bruce Kogut

Taught in many places around the world, lived many years in Europe (primarily France but also Sweden and Germany), was chaired full professor at Wharton, INSEAD, before coming to CBS in 2007. I have served on corporate and non-profit boards primarily outside the US. These include the board to 3i Infotech India and to the non-profit board of the International School of Paris, academic boards to IFMR (Chennai), Skema (France), and Skolkovo (Russia), and the advisory boards to chief economist at the EBRD, Unlimited India., and the Institute for Advanced Study in Berlin. I am currently a member on the advisory board to the Institut Polytechnique de Paris. I also founded INSEAD’s Social Enterprise Program, and have run centers for research and curriculum at Wharton and Columbia Business school and served as the Scientific Director of EIASM located in Belgium. I work currently on applications of data analytics to the virality of fake news, to political bias in economic text, to the effects of AI on the future of work, and performance of firms and micro-finance organizations, among other things including...governance.

You can find a clip of me on the John Stewart Show (John Oliver), trying to explain what ethics is about for MBAs. The Bernstein Center has also produced a film on financial innovation, starring among others star academics (Nobel prize winner Robert Solow and Bruce Greenwald), business professionals (Blythe Masters, Peter Stringham), politicians (Barney Frank), Journalists (Andrew Sorkin), City government (Alicja Glen). I encourage you to read some articles that I have written for the more popular press such as HBR on social enterprise; 538 on political influence in economic research; Medium on Zombie owners (with D Wang) and on the passing of Jacques Chirac; Forbes on the Greening of the Apple. Just Google the above along with my name. Have a look.
**Class Hours and Zoom and Guest Speakers**

Every class is broken approximately into these time slots: 9:00 to 10:30; 10:45 to 12:15; 1:20 to 3:00; 3:30 to 5:00. There are two breaks plus lunch. Please consult the calendar and syllabus at the start of the day, as times may change.

Zoom is what it is, which is a fairly stable platform for distributed and centralized conversations. This gives us the flexibility to move from lecture to breakout rooms, and we will do both. It is not perfect, and it is demanding on the professor (me) and on students. I’ve had great success in making this work by keeping expectations low, errors will occur, not everything will be perfect. We are co-producers of this class, I look to each of you to be engaged and to keep us moving, keep the conversation alive, ask your questions.

We will have four (maybe five) speakers, never two a day. We are all hosts, they are remarkable people who said yes to talk with us, let’s be prepared and engaged.

Information for students participating asynchronously, please read below the section on Course grade and the next section just below.

**What is expected of you?**

I expect that you read the cases before the class starts and the required readings too. The class will fail if you do not read the material, so don’t free ride. We need your participation.

All written assignments for prepping for each class should be submitted by sending your responses to me and the TA by 9 pm the night before. These are meant to be short responses, but longer than poll responses.

If you are not within the time zones periphery that mandates your synchronous participation, you are expected to watch all of the asynchronous videos, do all the required readings (at least), and hand in your assignments prior to the EST deadlines given above. I will gladly set up office hours for you at midweek to discuss the material; please contact our capable Ras and we will organize a time (and also groups).

**Some Heads-Up**

Before the start of the first class, you are required to go on to this page, ISS Quick Governance Score, scroll down and click on “Search Governance QualityScore” (see blue banner), and then find the score of a company of your choice. Be prepared to explain if you agree with the score. You may have to register on the site to gather the data. I will call on you.

The session #3 (July 27th) is a mock simulation of the decision to redesign the governance system after the resignation of Travis Kalanick as CEO and his unexpected placement of two new directors on the board. You will be assigned randomly to new groups and you will need to access this from Canvas the week before. It is a disaster if you don’t come prepared, with case read, and the background chapters too.

We discuss questions that are about governance but are controversial. These conversations are open and give a chance to explore different views and experiences on questions of our times. These discussions are very much
appreciated by participants, and I continue this tradition though it bears the risk that you will hear an opinion you don’t like, or you may not agree with me in taking, or not taking, a perspective. Be tolerant.

For example, we discuss if you think there should be quotas mandating minimal percentage of women on boards? You will disagree. You may feel you know more about this than others. The point is to learn from each other. Who knows –your influence may be felt after class, so don’t be disappointed if others don’t agree, yet.

**Polls and other questions**

You will be asked to answer poll questions for each day, due by 9 pm the night before. These are done individually. The TA reads these polls, and I review ones that are good, provocative, or solar systemic.

Some sessions require you to submit work. Be attentive to reading the syllabus.

**Other in-class graded Assignments**

There will be an in-class quiz July 30th.

On July 31st, you are to be prepared to discuss your design of a governance solution to the blockchain project that we will discuss on July 31st. As this class moves quickly, my advice is to read the material before the start of course. You will be assigned to a group on day 1 and you will have the remainder of the week to work on the project. Some groups will be asked to present their design on July 31; volunteers are welcome prior to July 31st to request to present. I will provide more details when the course starts.

**Final Exam**

You will submit a 5 page document explaining the governance design you propose for the blockchain project. You may also request to do a different company/organization with my approval prior to the final class July 31.

**Course Grade**

Class attendance and assignments are mandatory. I adhere to the grading distribution policy of CBS.

30% of your grade will be final exam to develop a governance plan for the blockchain community “The Dao” discussed under final exam.

10% In-class quiz July 30th.

30% is participation.

30% are the assignments (e.g. polls, any one-page assignments) to prep for the classes.

A frank discussion. I have a super high opinion of the ethics among MBAs and for that reason, I have a very harsh policy on any infraction.

First, remember that citations and references to all quoted and used material are mandatory. Please do not overlook this requirement.
Second, if you are within “the time zone” (see next paragraph) missing a class cannot be excused without writing me ahead of time (at least the day before). I accept only urgent family matters (sickness and death), babies delivered (photo required). Weddings, parties of any sort, or anything else are not excused absences. These are not my rules.

If you are outside the time zone, we follow the CBS policy given on the website: “Students located in a time zone where class falls outside the window from 6:00 am to 10:30 pm their local time will be permitted to attend class asynchronously via class recordings. Students who do not view the class live must watch the recording within 24 hours of posting to be considered as having attended.”

- We sent out a survey collecting time zone information. If you join late, or did not receive the survey, please contact Anna Tsilidou, email given above.
- All students who take the class asynchronously are required to meet with on zoom for a 30 minute discussion. Groups up to 3 are welcome. Please contact Anna and me to propose a time. Lunch can work, as can after class. It is best for us to meet at a time on Tuesday to Thursday.

Finally, I will submit a random selection of all written work to be checked algorithmically. Cheating is not CBS compliant: don’t do it.

**Required Sources for the Course**

- All readings are required. The most important reading will be the case if one is assigned. Don’t wait for the week to start without reading through them, and reading Uber case in detail in particular. The textbook, described below, is very easy to read. You will need to read the assigned pages if you want to come ready to discuss governance. The rest of the readings come from short articles (with very few exceptions). I expect you to read them (you are CBS students!!!). Many of them are very short.


This book is a broad textbook, informed by comparison between countries and by different ideas of how to govern. While less analytical than the Hansmann book (see below), it is also less dogmatic in favoring a single logic to determine the best governance choice. Sometimes, in particular, it does not cover adequately a topic. The powerpoint slides are posted every day, and you will be responsible for knowing their contents.

**Recommended:**


  This book presents the classic law and economics approach to governance of many kinds of enterprises and organizations. The argument relies upon a principle of finding the right governance form that most efficiently organizes the activities of the governed entity.

This book was financed by the World Economic Forum, Wharton, and INSEAD, and presented in a day-long series of panels and discussions at the annual meeting in 2002. The book was written just following the passing of the Sarbanes-Oxley Act and the Act was already having an impact on governance around the world. The chapters are written by academics, industry, and government leaders.

Zoom

By now, you have had lots of experience with Zoom and on-line teaching. I view teaching in general, but especially for on-line, as co-production. We all have to make the class work. There are certain guidelines that make a class work. For example, your video is on, you don’t disappear, you help the class be engaged by being engaged and prepared. We share the same goals. To make the course enjoyable and valuable and to get us thinking about what is governance.
Course Outline

July 27

**Topic: Fundamentals of Corporate Governance**

Session #1: Governance and Power (9:00 – 10:30)

- Private property
- The State
- Privatization
- Alternatives

**Individual Assignment:** See the Assignment for evaluating a company using the ISS Governance Score on page 3.

Reading: Tricker, chapters 1 & 2 (this book is a big print easy read that you will like)


Session #2: The Private Firm (10:45 – 12:00)

**Topic:** Governance of the VC-Backed Firm

***You will meet will be assigned to a group that will meet at the start of this session. The groups are already picked and you will be assigned at that time.***

Reading: Tricker, chapters 4 (important chapter; make sure to know pages 96-99)

Case Reading: The Uber Board Deliberates: Is Good Governance Worth the Firing of an Entrepreneurial Founder?, Columbia CaseWorks

Highly recommended reading: Tricker, chapter 15 (pages 379-383; bottom page 389-401)

Questions:
1. How far should the board extend governance into the decisions of management for a private firm?
2. Were there violations of good governance?
3. As a board member, did you have enough information to make a decision regarding the future of Kalanick?
4. Why is the Softbank investment so important to governance?

**Extended Lunch (12:00 to 1:30) During part of this time, you should meet in your assigned groups. See Session #3 instructions.**
Session #3: Group Behavior and Board Decision-Making (1:30-2:50)

Reading: Tricker, chapter 14

Group assignment:

Prepare answers to the questions in the case for possible selection to be the “Uber Board” in session #3.

Prepare alone your possible role in a reenactment of the Uber board meeting what to do. Each person is assigned one of the key participants in the Uber case: we will email you your role and you don’t share your role with others on your team. Two teams will play these roles during the class.

Attention: You will have to prep especially for this class, so READ the material.

• The Uber case.
• Read the private information about your character that will be emailed/given to you the day before the case
• Prep questions for your role:
  1. If you were a member of that board, what would you do?
  2. What actions should the board have taken to arrive at the best decision?

Session #4: Why not keep it private? Value of Principal-Agency Theory (3:20 -5:00)

Guest Speaker: Alan Jones (former Managing Director and Head of Global Private Equity, Morgan Stanley)

Reading: Tricker, chapter #3 (read carefully pages 59-64); chapter 11 (don’t miss pages 279-281)

Questions:

1. What changes when a partnership becomes a public corporation?
2. Why not reverse the decision and take the firm private?
3. Why would anyone work for a public firm if they could work for a private firm in the same industry?

July 28

Session #5: The Public Firm and Watch Dogs (9:00-10:20)

Case: Ratan Tata or Cyrus Mistry: Tata Steel’s Shareholder Dilemma (spreadsheet)

Reading: Tricker, Chapter 10, The Governance of Listed Companies (especially 250-256); Tricker, chapter 11 (especially pages 268-271;

“Clause 49 Compliance”, KPMG, India (one-page)

Break: 10:20-11:00 Use the time to review the article on Frank and Steve.

Session #6: Debate: Hostile and Activist Investors (11:00 – 12:15)

Chief Article:


Readings -Activists come to Germany:

Thyssenkrupp splits under pressure from activists, Economist, October 6, 2018.

Tricker, chapter 4, review again pages 84 to 96; read please carefully description of supervisory board and employees on board. These are elements of the German governance system.

Questions:

1. Do you think activists play a positive role in capital markets?
2. Should governments regulate activists and hostile acquirers?

In-class exercise: you will meet in groups and decide whether you would engage in activism given the current documents on Tejon Canyon that we will provide you.

Lunch Break (12:15-1:30)

Session #7: Governance and Diversity: Do Mandated Diversity Quotas Interfere with Property Rights? (1:30-2:45)

We start with a discussion of ESG and Engagement and review more sharply the reasons for the public justification of the public corporation and business. The second half of this class session will discuss mandated quotas.

Readings: These are short editorials or pop reports -please read.

The California Mandated Quota for Woman Directors
Do quotas for corporate boards help women advance?
Kogut, Bruce: Do Boards Need Mandated Quotas?

Questions:

1. Do you think that legislated mandates for female quotas is in contradiction of the right to private property?
2. Do you think society has the right to interfere in the governance decisions of a private publicly-traded company?
Recommended:

Video: FYI: CBS Faculty Debate on Board Quotas, Professors Wei Jiang and Bruce Kogut, Alumni Event, May 3, 2019 (5 minutes)

Break: 2:45 – 3:30 Read materials for Facebook discussion.

Session #8: Shareholder Governance and Societal Oversight (3:30-5:00)

Individual Assignment: Look up the ISS governance ratings for Facebook

Readings:

Facebook has put growth ahead of governance for too long, Fana Faroohar, FT, December 2018.

Oversight Board, Facebook.

Statement from Social Science Research Council President Alondra Nelson on the Social Media and Democracy Research Grants Program, SSRC, August 27, 2019.

Highly recommended:

Privacy concerns could derail unprecedented plan to use Facebook data to study elections, Jeff Mervis, ScienceMag, September 2019.

Privacy Not a Blocker for ‘Meaningful’ Research Access to Platform Data, TechCrunch, June 25, 2020

Questions:

1. Should Facebook be treated as a public utility, with stronger regulatory duties?
2. Should a citizen’s oversight board be independent of shareholders’ preferences and oversight?

July 29

Session #9. Debate: The purposed firm (9:00 – 10:20)


Preparation:

Larry Fink, CEO Blackrock, Annual letter to CEOs, “A Sense of Purpose”
Business Roundtable, 1978: The Role and Composition of the Board of Directors of the Large Publicly Owned Corporation
Hart and Zingales: Serving Shareholders Doesn’t Mean Putting Profit Above All Else, HBR

Questions:
1. Do you find the letter by the 180 CEOs of public firms to be credible? Or is it a form of green-washing?
2. By their argument, should private equity, or any non-public corporate entity, have a corporate purpose?
   a. Or to rephrase this question, is there a property of the public corporation that particularly ties their purpose to the common good?
3. Do you find the Hart and Zingales argument for a common good to be persuasive? Does it extend beyond the public firm?

Break: 10:20 - 10:40

Session #10: Rating Companies for their Social Impact (10:40 – 12:15)

Reading: Tricker, chapter 9, “Social Corporate Responsibility and Sustainability”

Recommended: Youtube: Professor Lynn Stout talking to the law school at the University of New South Wales, Australia. Professor Stout was the leading legal voice arguing for providing more power to workers.

Assignment: Please go on-line and check out the social ratings of the top 100 firms evaluated by Just Capital. You may do this in a group. Please meet.

Question – Discuss in a group: Why is S in ESG so hard to evaluate, how does Just Capital evaluate it, and what do you propose?

Extended Lunch (12:15 -1:45)

Please meet in your groups to prepare the case material for July 31.

Session #11: Stewardship in Practice: Promises and Perils (1:45 to 3:00)

Case: Blackrock: Linking Profit to Purpose

Reading:
When Larry Fink Met Greta Investors Join In Calls For Corporate Sustainability

Session #12: Engagement and the Common Ownership Problem (3:20 – 5:00)

Guest: Michelle Edkins, (Managing Director and Global Head, BlackRock's Investment Stewardship)

Review: Tricker, section on Stewardship, Ch 2, pages 65-68.

Questions to prepare in a team:

1. What does engagement mean for the portfolio selection of companies and for the evaluation of mutual fund performance?
2. What does materiality mean to this discussion?

July 30

Topic: Power, Politics, and the Tepid Relationship of Firms and Governments

Session #13: Should firms have first amendment rights to finance public advertising? (9:00-10:20)

Reading: Ten things You Should Know about Campaign Finance (Make sure to read #9) The 10 Things They Won't Tell You About Money-in-Politics


Questions:

1. Should firms have first amendment rights to finance public advertising?
2. What is the corporate governance objection to corporate political contributions?
3. What should be the system to regulate campaign contributions by firms?

Session #14. Business, Politics, and Governance (10:45-12:15)

Speaker: John Podesta (10:45-12:00/15)

Questions:

1. Should business be permitted to lobby and to provide campaign contributions in the United States?
2. Are think tanks too conflicted to play an effective role in curbing corporate governance abuses, such as buying influence or its choice of directors?
3. Is there sufficient public voice in the governance of tech firms?

Lunch Break (12:15-1:15)

Brief Quiz on governance concepts after lunch. Questions based on main readings (primarily Tricker), power points, class discussion. (1:15-1:35)
Session #15: Privatization and Sovereign Risk (1:35- 3:00)

Case: Korea First Bank (A)

The argument for privatization is the governance efficiency of private ownership. Governments pursue many objectives other than efficiency, ranging from social policies to favoring political groups (e.g. farmers in Japan, oil in the US, labor in South Africa)? However, the evidence is more mixed than these arguments suggest, and major scandals have marred, for example, the selling of telecom licenses and the subsequent pricing of phone, internet, and content services. The privatization of prisons and of social security has also a complicated and contested history.

Reading:


Germany to Take Stake in Company Working on Virus Vaccine, AP News, June 15, 2020

China government assigns officials to companies including Alibaba, Louise Lucas, September 23, 2019.

Questions:

1. Do you think business groups (e.g. chaebols in Korea) are inefficient and should be broken up?
2. Do you think that institutional financial organizations, e.g. the World Bank, were right in its economic argument to require the Korean government during a financial crisis to sell Korean First Bank to a foreign owner?
3. What is your evaluation of the terms of sale?
4. What are the limits of government participation in companies?

Break: 3:00 – 3:20

Session #16: 3:20 – 5:00

Group meetings to discuss presentations for tomorrow’s class on Blockchain. Make sure to come to class having read the case reading and readings for sessions #17-18.

July 31

Topic: Innovative Solutions to the Problem of Governance

Sessions #17 & #18: (9:00 – 12:15 with break)

Designing Decentralized Autonomous Organizations as Solutions

This double class session will consist of discussion and also a few group presentations. Assignment is given below.

Readings:

Morley, John, That Book on Blockchain. A One-hour Intro, published by author, 2017; for your purchase. (Price: $7.75). (Read especially chapter on Ethereum that you background to our case, and also an introduction to smart contracts.)

More on Ethereum...

Suggested readings:

A leading law review article on trying to distill the promise of a bitcoin contract:


In case you want to see the Satoshi original manifesto for Bitcoin:

Bitcoin: A Peer-to-Peer Electronic Cash System
A video in Progress that explains how blockchain works.

Assignment:

Above all, blockchain is an electronic ledger. Transactions must be recorded and all transactions must be transparent. They must be stored and their integrity is immutable -they cannot be altered.

Question to be prepared in team of two to four and submitted by 8 pm July 30th as a (max) 4 slide ppt:

We are interested in designing a governance solution for a distributed autonomous organization.

Design a governance solution for “The Dao”. (Please use words, no code; avoid technical details -you may append if you wish.)

Advice: Governance is power. Governance is efficiency, fairness, accountability, transparency. Who should govern? To whom are they responsible -what powers do they have? What are the decision rules: fiat? Voting? Immutable code? You will need to think about these elements if you want to design a better governance system than that of “the DAO”.

Preparatory questions:

1) Who has the power? Over whom and what?
2) Is there an equivalent to a shareholder?
3) Who has the right to decide?
4) Who has the right to the cash flows?
5) Is there an equivalent to the board?
Lunch Break: 12:15 – 1:20)

Session #19: A Global Perspective on Governance (1:20–3:00)

Guest: Lucy Quist, Managing Director, Morgan Stanley

Lucy Quist has broad experience as a business leader in Ghana and now London with Morgan Stanley, an agent of reform for African football, and participation in many boards. She will talk to us about governance in Africa and in Europe, as well as about the many challenges facing business globally.

Suggested Reading:

Lucy Quist, The Bold New Normal -Creating the Africa where Everyone Prospers, Accra: DÃkapabli and Associates. (Amazon: price ~ $10.00)

Break: 3:00 – 3:20

Session #20: Future of Governance (3:20 – 5:00 including evaluations)

Six Challenges of Governance

1. Inclusiveness in an Inegalitarian World
2. Sustainability of Private Property
3. Technology and Governance
4. China, State Capitalism, and Shareholder Democracy
5. Getting along without Going Along
6. Predicting the Future

Reading: Six Challenges of Governance, Bruce Kogut